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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
LEASE NO. H-91-4

KAWAIHAE REEFER POWER CONDUITS, PEDESTALS AND SWITCH BOARD PAD
CONTAINER HANDLING FACILITY
KAWAIHAE HARBOR
HAWAII, HAWAII



STATE OF HAWAII
HARBOR LEASE NO. H-91-4

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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION

LEASE NO. H-91- 4

THIS INDENTURE OF LEASE, made this 15th day of March, 1991, by and between the **STATE OF HAWAII**, by its Director of Transportation, hereinafter called the "LESSOR," and **MATSON TERMINALS, INC.**, whose business address is P. O. Box 2630, Honolulu, Hawaii 96803, hereinafter called the "LESSEE,"

WITNESSETH:

1. **AREA LEASED.** THAT THE LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed and performed, does hereby demise and lease unto the LESSEE and the LESSEE does hereby lease and hire from the LESSOR, those certain power easements situated at the Container Handling Facility, Kawaihae Harbor, Hawaii, Hawaii, hereinafter called the "easement area," and shown and delineated on the map designated Exhibit "A" in red for Easements 2 through 11 and in green for Easement 1, which is attached hereto and made a party hereof. The power easements are designated as follows:

Easement 1 (2,048.59 square feet): Underground easement for reefer power line.

Easement 2 (9.0 square feet): Surface easement for reefer power pull box.

Easement 3 (32.0 square feet): Surface easement for reefer power switchboard pad.

Easement 4 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 5 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 6 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 7 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 8 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 9 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 10 (2.25 square feet): Surface easement for reefer power pedestal.

Easement 11 (2.25 square feet): Surface easement for reefer power pedestal.

2. USE OF PREMISES. The easement area shall be used solely for the construction, installation, maintenance, use and repair of subsurface and surface power conduits and receptacles to provide electric power for refrigerated cargo containers. No other use shall be permitted, except upon the written approval of the LESSOR.

3. DEFINITIONS. As used herein, unless specifically indicated otherwise or clearly repugnant to the context:

- (a) "Director" means the Director of Transportation of the State of Hawaii or his representative;
- (b) "LESSEE" means the LESSEE herein, its successors or permitted assigns, according to the context hereof;
- (c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the demised premises and who has filed with the Department of Transportation and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;
- (d) "Easement area" means the land affected by the power easements and all improvements now or hereafter constructed and installed thereon;
- (e) "LESSOR" means the State of Hawaii.

4. GENDER AND NUMBER. The use of any gender includes all genders; the singular includes the plural and the plural includes the singular.

5. HEADINGS NOT TO BE USED TO CONSTRUE DOCUMENT. The marginal headings throughout this lease are for the convenience of the LESSOR and the LESSEE and are not intended to construe the intent or meaning of any of the provisions hereof.

6. LEASE TERM. The term of this lease shall be for a period of thirty-five (35) years commencing on the date the improvements

described in paragraph 9 are ready for operational use. LESSOR shall notify LESSEE in writing the date when the improvements are ready for operational use and send an information copy to the Federal Maritime Commission.

And subsequent amendment hereto shall be filed with the Federal Maritime Commission as provided in Section 5(a) and become effective on the date of filing.

7. RENTALS AND CHARGES. During the first five (5) years of the term of this Lease, as provided in this lease, the LESSEE shall pay an annual rent of THREE HUNDRED SIXTY DOLLARS (\$360.00); from the sixth (6th) through the tenth (10th) year, the LESSEE shall pay an annual rent of FOUR HUNDRED SIXTY-EIGHT DOLLARS (\$468.00); and from the eleventh (11th) through the fifteenth (15th) year, the LESSEE shall pay an annual rent of SIX HUNDRED EIGHT DOLLARS (\$608.00). Annual rental for subsequent years determined under paragraph 10 shall be set forth in amendments hereto filed and effective as provided in paragraph 6.

8. REFRIGERATED SHIPPING DEVICE SURCHARGE. The refrigerated shipping device surcharge prescribed in Section 19-44-12, Commercial Harbors and Tariff, Part 1, Subtitle 3, Title 19, Hawaii Administrative Rules, shall not apply to refrigerated containers loaded or off-loaded by or for the account of Matson Navigation Company, Inc. at the port to which this lease applies so long as there are at such port electrical outlets for refrigerated containers owned by LESSEE whether the outlets are actually used or not.

9. CONSTRUCTION OF CONDUIT, PEDESTALS, RECEPTACLES AND POWER LINE. LESSOR agrees to construct, install, supervise and inspect at LESSEE's expense refrigerated container electric power conduit, pedestals, receptacles and line at locations designated on Exhibit "A" under plans and specifications provided by LESSEE and approved by LESSOR, and at costs approved by LESSEE. LESSEE agrees to promptly reimburse LESSOR for LESSOR's cost of such construction and installation within fifteen (15) days after receipt of contractor's approved invoices. LESSEE agrees to pay LESSOR a fee for such supervision and inspection in the amount of five (5) percent of the cost to LESSOR of such construction and installation. LESSOR and LESSEE will execute a Memorandum of Escrow Agreement to be effective when this Lease is effective. To assure prompt and full payment, after approval by LESSOR, of those portions of contractor's invoices for progress and final payments attributed to such construction and installation LESSEE will promptly deposit in escrow, for withdrawal from time to time pursuant to the terms of such Memorandum of Escrow Agreement, the amount stated in a written notice delivered by LESSOR to LESSEE after LESSOR has opened bids for construction at Kawaihae that includes the improvements described above.

10. RENTAL REOPENING.

- (a) Period. The annual rental hereinabove reserved shall be reopened and redetermined at the expiration of the fifteenth (15th) and twenty-fifth (25th) years of said term. The appraiser(s) referred to below shall also determine an appreciation rate to be applied on the latter five (5)-year portion of each ten (10)-year period, which rate shall not be less than thirty (30) percent.
- (b) Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental based upon all legal uses and not necessarily limited to the uses at the time of reopening. Except as provided herein, the provisions in Chapter 658, Hawaii Revised Statutes, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the LESSOR, and the LESSEE shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by LESSOR'S appraiser; provided, that should the LESSEE fail to notify LESSOR in writing within thirty (30) days after receipt thereof that LESSEE disagrees with the fair market rental as determined by LESSOR'S appraiser and that LESSEE has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by LESSOR'S appraiser shall be deemed to have been accepted by LESSEE and shall be the fair market rental as of the date of reopening. If LESSEE has notified LESSOR in writing and appointed his appraiser as stated hereinabove, LESSEE'S appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of LESSEE'S appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both LESSOR

and LESSEE, subject to vacation, modification or correction in accordance with the provisions of Section 658-8 and 658-9, Hawaii Revised Statutes. The LESSEE shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the LESSOR and the LESSEE. All appraisal reports shall become part of the public record of the LESSOR.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the LESSEE shall pay the fair market rental as determined by LESSOR'S new appraised value until the new rent is determined and the rental paid by LESSEE shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, LESSEE or LESSEE'S appraiser's failure to comply with the procedures set forth above shall constitute a waiver of LESSEE'S right to contest the new rent, and the LESSEE shall pay the rent as determined by LESSOR'S appraiser without any retroactive adjustments. Alternatively, LESSOR may treat such failure as a breach of this lease and terminate the lease.

The value of improvements constructed, installed and owned by the LESSEE within the easement area shall not be considered in determining the fair market rental.

LESSOR and LESSEE shall evidence such redetermination of annual ground rental made hereunder by a written instrument signed by LESSOR and LESSEE. LESSOR shall submit to the Federal Maritime Commission for its information a statement of the amount of the annual ground rental as so redetermined hereinabove.

11. TIME AND METHOD OF PAYMENT. The LESSEE shall pay to the LESSOR at the Harbors Division, 79 South Nimitz Highway, Honolulu, Hawaii 96813, a net annual rental as provided hereinabove, payable in advance; the first payment being due upon the commencement date of this lease and all subsequent payments being due on the first day of February of each and every year during said term, provided that the first payment shall be at the net annual rate prorated for the period from the first day of the lease term through the first subsequent January 31. LESSEE shall pay said rent to the LESSOR at the time, in the manner and form aforesaid and at the place specified above, or at such other place as the LESSOR may from time to time designate, in legal tender of the United States of America.

12. INTEREST; SERVICE CHARGE. Without prejudice to any other remedy available to the LESSOR, LESSEE agrees without further notice or demand, as follows:

- (a) to pay interest at the rate of one percent (1%) per month, compounded monthly on all delinquent payments;
- (b) to pay a service charge of up to \$50.00 each month for all delinquent payments; and
- (c) that the term "delinquent payments" as used herein means any payment of rent, fees or other charges payable by LESSEE to LESSOR, which is not paid when due.

13. MINERALS AND WATERS. The LESSOR reserves the right to (a) all minerals as hereinafter defined, in, on or under the easement area and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the LESSEE'S permitted activities on the easement area and not for sale to others; and (b) all surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the easement area as may be required in the exercise of this right reserved; provided, that as a condition precedent to the exercise by the LESSOR of the rights reserved in this paragraph just compensation shall be paid to the LESSEE for any of LESSEE'S improvements taken.

14. PREHISTORIC AND HISTORIC REMAINS. All prehistoric and historic remains found within the easement area shall be and remain the property of the LESSOR and shall not be disturbed or removed by the LESSEE, its employees, agents or contractors, without the express approval of the Director of Transportation.

15. EASEMENTS. The LESSOR reserves the right to establish, or to sell or grant to others, easements required for maritime or utility purposes; provided, that such easements shall not unreasonably interfere with the LESSEE'S use of the easement area.

16. CONSTRUCTION OF IMPROVEMENTS. During the term of this lease, no additional improvements, alterations or additions will be constructed on or under the easement area unless the LESSEE first submits its plans and specifications to the LESSOR for its approval

and approval is granted by the LESSOR in writing. Also, if applicable, LESSEE shall obtain the necessary building permit from the County of Hawaii. The plans and specifications must be in full compliance with all statutes, ordinances, and rules and regulations applicable thereto. Except as otherwise provided in paragraphs 36 and 42 herein, the LESSEE shall retain title to any and all leasehold improvements, trade fixtures, furnishings, equipment and other personal property constructed, placed or installed by the LESSEE, at its own cost and expense, during the term of this lease.

17. CONTRACTOR'S INSURANCE. Before commencing the construction or installation of any additional leasehold improvements on the easement area, the LESSEE shall require that all contractors and subcontractors employed on the easement area by the LESSEE or the LESSEE'S contractor procure and maintain in full force and effect during the course of construction and installation the following insurance:

- (a) Worker's Compensation as required by law.
- (b) Contractor's Comprehensive General Liability and Property Damage with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.
- (c) Contractor's Automobile General Liability and Protective Property with a combined minimum single limit of \$300,000.00 for bodily injury and property damage per occurrence.

18. SANITATION, MAINTENANCE OF PREMISES. That the LESSEE at all times during the life of this lease shall keep and maintain all portions of the premises and improvements thereon in good repair and in a strictly clean, neat, orderly and sanitary condition, free of waste, rubbish and debris and other refuse.

THE LESSOR COVENANTS AND AGREES WITH THE LESSEE that upon the payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold and enjoy the demised premises for the term hereby demised, without hindrance or interruption by the LESSOR or any other person or persons lawfully claiming by, through or under it.

THE LESSEE FURTHER COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

19. Taxes, Assessments, etc. That the LESSEE shall pay or cause to be paid, when due, all taxes, rates, assessments and other outgoings of every description as to which said easement area or

any part thereof, or any improvements thereon, or the LESSOR or LESSEE in respect thereof, are now or may hereafter be assessed or become liable by authority of law during the term of this lease; provided, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only such installments, together with interest, as shall become due and payable during said term.

20. Utility Services. That the LESSEE shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said easement area or any part thereof, or any improvements thereon or the LESSOR or LESSEE in respect thereof may during said term become liable, whether assessed to or payable by the LESSOR or LESSEE.

21. Covenant Against Discrimination. That the use and enjoyment of the easement area shall not be in support of any policy which discriminates against anyone based upon race, sex, color, religion or ancestry.

22. Sanitation, etc. That the LESSEE shall keep the easement area and improvements in a strictly clean, sanitary and orderly condition.

23. Waste, and Unlawful, Improper or Offensive Use of Premises. That the LESSEE shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the easement area, or any part thereof.

24. Compliance with Laws. That the LESSEE shall comply with all requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes and all rules and regulations, pertaining to the said demised premises, now in force or which may hereafter be in force.

25. Inspection of Easement Area. That the LESSEE will permit the LESSOR and its agents, at all reasonable times during the said term, to enter the easement area and examine the state of repair and condition thereof.

26. Improvements. That the LESSEE shall not at any time during said term construct, place, maintain or install on the easement area, any building, structure or improvement of any kind and description whatsoever except with the prior written approval of the Director and upon such condition as the Director may impose, including an adjustment of rent, unless otherwise provided herein.

27. Repairs to Improvements. That the LESSEE shall, at its own expense, keep, repair and maintain all pipelines and improvements now existing or hereafter constructed or installed by

the LESSEE on or in the easement area, in good order, condition and repair, reasonable wear and tear excepted.

28. Liens. That the LESSEE will not commit or suffer any act or neglect whereby the easement area or any improvement thereon or the estate of the LESSEE in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the LESSOR from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

29. Assignments, etc. The LESSEE shall not transfer, assign, or permit any other person to occupy or use the easement area or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or interstate succession, and any transfer or assignment made shall be null and void; provided that the prior written approval of the LESSOR the assignment and transfer of this lease or any portion may be made pursuant to section 171-36, Hawaii Revised Statutes, and more particularly if:

- (a) It contains the personal residence of the LESSEE;
- (b) In the case of commercial, industrial, and other business uses, the LESSEE was required to put in substantial building improvements;
- (c) The LESSEE becomes mentally or physically disabled;
- (d) Extreme economic hardship is demonstrated to the satisfaction of the LESSOR; or
- (e) It is to the corporate successor of the LESSEE;

provided, further, that prior to the approval of any assignment of lease, the LESSOR shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the LESSEE of a premium of fifty percent (50%) of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee, as further explained in Exhibit "B" attached hereto. The premium on any subsequent assignments shall be based on the difference in the selling and purchase price plus the straight-line depreciated cost of any improvements constructed by the then Assignor.

If the LESSEE is a partnership, joint venture or corporation, the sale or transfer of twenty percent (20%) or more of ownership interest or stocks by dissolution, merger or any other means must be reported to the LESSOR and shall be deemed an assignment for purposes of this paragraph and subject to the right of the LESSOR

to impose the foregoing premium on the difference between the selling price and the cost of the investment appreciated at eight percent (8%) per year, it being the intent that any substantial profit resulting from the sale or transfer of ownership interest shall be subject to the payment of a premium to the LESSOR.

30. Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the easement area without the prior written approval of the Director. The Director shall have the right to deny uses contrary to the primary purpose of the lease, to review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the proposed sublessee by the LESSEE; and to include such other terms and conditions prior to any approval by the Director; provided further, that the rent may not be revised downward.

31. Indemnity. That the LESSEE will indemnify, defend and hold the LESSOR harmless (a) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the easement area and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the easement area, or by any fire thereon or growing out of or caused by any failure on the part of the LESSEE to maintain the easement area in a safe condition and will reimburse the LESSOR for all costs and expenses in connection with the defense of such claims; and (b) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

32. Costs of Litigation. That in case the LESSOR shall, without any fault on its part, be made a party to any litigation commenced by or against the LESSEE (other than condemnation proceedings), the LESSEE shall and will pay all costs and expenses incurred by or imposed on the LESSOR, furthermore, the LESSEE shall and will pay all costs and expenses which may be incurred or paid by the LESSOR in enforcing the covenants and agreements of this lease, in recovering possession of the easement area or in the collection of delinquent rental, taxes and any and all other charges.

33. Liability Insurance. That the LESSEE shall procure, at its own cost and expense, and keep in force during the entire term of this lease, with an insurance company or companies acceptable to the LESSOR, a policy or policies of comprehensive general liability insurance in a combined single limit amount of not less than \$500,000.00 for bodily injury and property damage per occurrence;

that said policy or policies shall cover the easement area, including all improvements and grounds and all roadways and sidewalks on or adjacent to the easement area in the control of the LESSEE. The LESSEE shall furnish the LESSOR with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer that the LESSOR shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in said policy. The procuring of this policy shall not release or relieve the LESSEE of its responsibility under this lease. The policy or policies required under this provision shall name the LESSOR as an additional insured.

The minimum limits of insurance recited herein may be increased by such amounts as the Director, in the exercise of sound and prudent judgment, may require.

34. Performance Bond. That the LESSEE shall, at its own cost and expense, within thirty (30) days after the effective date of this lease, procure and deposit with the LESSOR and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said LESSEE of all of the terms, conditions and covenants of this lease, in an amount equal to one-fourth (1/4) of the annual rental payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the LESSOR as liquidated and ascertained damages and not as a penalty. Said bond shall be maintained by the LESSEE at its own cost and expense and shall cover the LESSEE'S operations during the term of the lease; provided, that suits thereon by the State or anyone else entitled to do so may be commenced within the period of limitation for contract claims unless otherwise specifically provided.

35. LESSOR's Lien. That the LESSOR shall have a lien on all improvements placed within the easement area by the LESSEE; and on all property kept or used by the LESSEE within the easement area, whether the same is exempt from execution or not for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the LESSOR on behalf of the LESSEE and for the payment of all monies as provided in this lease to be paid by the LESSEE, and such lien shall continue until the amounts due are paid.

36. Surrender. That the LESSEE shall surrender peaceably to the LESSOR the easement area on the date of the cessation of this lease, whether such cessation be by termination, expiration or otherwise, promptly and in the same condition as at the commencement of this lease, reasonable wear arising from the use of

said easement area to the extent permitted elsewhere in this lease and damage resulting from causes over which the LESSEE had no control excepted; provided that, the LESSEE shall have the right, when not in breach of any provision herein, within thirty (30) days after the expiration of this lease, to remove its improvements, equipment, trade fixtures and personal property from the easement area in such a manner as to cause no damage thereto, and in the event of any such damage, the LESSEE shall, at its own cost and expense, repair or otherwise remedy the same and provided further that, in the event the LESSEE fails or neglects to so remove all or any portion of its improvements, equipment, personal property or trade fixtures within the thirty (30) days after the expiration or termination of this lease, the LESSOR may remove and dispose of the same and charge the cost of such removal and disposal to the LESSEE, which costs the LESSEE hereby agrees to pay.

37. Easement - Inconvenience to the State, County, etc. That the LESSEE, while constructing, maintaining or using the easement area shall not unduly or unreasonably inconvenience the LESSOR, its licensees, permittees and other tenants in the use of the land crossed by or adjoining the easement area.

38. Easement - Repair and Restoration. The LESSEE shall promptly repair and restore, at its own expense, all damages to the surface of the easement area or the lands adjacent to said easement area, which it may cause in the construction, maintenance, repair or replacement, using materials of equal quantity and quality. It shall carefully backfill all excavations and compact all backfills in accordance with LESSOR'S specifications. Upon completion of any work performed in the easement area, the LESSEE shall remove all equipment and unused materials therefrom and shall leave the easement area in a clean and presentable condition, satisfactory to the LESSOR.

39. Easement - Relocation. If LESSOR decides that it is in the best interest of the STATE to relocate the Container Handling Facilities at Kawaihae Harbor, LESSEE shall pay the cost of relocating LESSEE'S electric power conduit and receptacles to an easement in the new Container Handling Facilities.

40. Easement - Surface Use. That the LESSOR may use for all purposes the whole or any portion of the land affected by the easement area and may grant to others, rights and privileges for any and all purposes affecting said lands; provided that, the rights herein reserved shall not be exercised by the LESSOR or by any agent, representative or assigns of the LESSOR in such manner so as to interfere unreasonably with the LESSEE in its use of the easement area.

41. Abandonment. That if the LESSEE should fail or cease to use or abandon said easement area for a continuous period of one

(1) year, all rights and interests granted herein shall cease and terminate and may be required to remove all improvements constructed therein by the LESSOR.

42. Surrender for Public Purposes. That if at any time during the term of this lease, all or any portion of the easement area is required for any public purpose, the LESSEE shall, upon written notice from the LESSOR given not less than three (3) months in advance, surrender all or such portion of the easement area as may be required and remove therefrom all of its improvements, equipment, personal property and trade fixtures, at no cost to the LESSOR. The LESSEE shall not, by reason of its surrender, be entitled to any claim against the LESSOR for its leasehold interest, for any reduction in rent or for any of its costs of removal. If, however, an alternate location on State property is available, the LESSOR, at its option, may, without rental adjustment, provide to the LESSEE the alternate location by appropriate amendment to this lease, and permit the LESSEE to relocate its improvements, equipment, personal property and trade fixtures thereon, at no cost to the LESSOR. If, however, the surrender of a portion of the easement area renders the remainder unsuitable for the purposes of the LESSEE, and the LESSOR provides no alternate location, the LESSEE may surrender the remainder of the easement area and be relieved of any further obligation hereunder except its obligation to remove from the easement area all of its improvements, equipment, personal property and trade fixtures, within such reasonable period as may be allowed by the LESSOR. Upon failure of the LESSEE to so remove, the LESSOR may proceed in accordance with the last proviso of Paragraph 34.

43. Mortgage. That upon due application and with the written consent of the LESSOR, the LESSEE may mortgage this lease or any interest herein or create a security interest in the easement area hereby demised. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of LESSEE'S interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under Chapter 171, Hawaii Revised Statutes, to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to

mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

44. Breach. That time is of the essence of this lease and if the LESSEE shall fail to yield or pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the easement area, or if this lease and the easement area shall be attached or otherwise be taken by operation of law, or if any assignment be made of the LESSEE'S property for the benefit of creditors, or if the LESSEE shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than five (5) business days where the breach involves failure to make timely rental payments and for a period of more than sixty (60) days where there is any other breach covered herein, after delivery by the LESSOR of a written notice of such breach or default by personal service, registered mail or certified mail to the LESSEE at its last known address and to each mortgagee or holder of record having a security interest in the easement area, the LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such easement area or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall become the property of the LESSOR. In the case of nonpayment of rent within the term of the lease, the LESSOR may re-enter such easement area and terminate the lease. In such event the LESSEE shall be liable for subsequently accruing rent during the term of the lease when the easement area is not re-let and for any deficiency resulting from a re-letting of such easement area plus expenses for the re-letting.

In the event LESSEE discontinues using the easement area for the uses and purposes enumerated herein and activities related thereto, without the consent of LESSOR from the date hereof, the LESSOR reserves the right to terminate the lease. The failure of the LESSEE to operate the facilities for the abovementioned uses for a period of at least fifteen (15) consecutive days shall constitute discontinuance of use of the easement area.

45. Right of Holder of Record of a Security Interest. That in the event the LESSOR seeks the forfeiture of the interest of the LESSEE created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the LESSOR may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the

holder to exercise its option, the LESSOR may: (a) pay to the holder from any monies at its disposal, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the LESSOR shall be entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the LESSOR, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispense of the affected land to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided, that a reasonable delay by the Board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still hope otherwise to resolve the problems created by the breach or default involved. The proceeds of any redistribution effected hereunder shall be applied, first, to reimburse the LESSOR for costs and expenses in connection with such redistribution, second, to discharge in full any unpaid purchase price or other indebtedness owing the LESSOR in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

46. Condemnation. That in the event that at any time during said term the easement area or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, including the LESSOR, then and in every such case the estate and interest of the LESSEE in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking of any land shall be payable to and be the sole property of the LESSOR, and the LESSEE shall not by reason of the taking be entitled to any claim against the LESSOR for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of the improvements erected or owned by the LESSEE upon the easement area shall be divided between the LESSOR and LESSEE in the ratios that the expired and unexpired portions of the term of this demise, respectively, shall bear to the whole term hereby created, and that in case only a part of the improvements constructed or owned by the LESSEE are taken, the LESSEE may claim and receive from the condemning authority but not from the LESSOR, any expense incurred by the LESSEE in repairing any damage thereto; provided that, in case a part of said easement area shall be required, taken or condemned, the rent thereafter

payable for the remainder of the term shall be reduced in the proportion that the area of easement so taken shall bear to the area hereby demised; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the easement area unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this lease.

47. Right to Enter. The LESSOR and the agents and representatives of the county in which said easement area are situated may enter and cross any portion of said easement area for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the LESSEE to the use and enjoyment of the easement area shall not be unreasonably interfered with.

48. Acceptance of Rent Not a Waiver. That the acceptance of rent by the LESSOR shall not be deemed a waiver of any breach by the LESSEE of any term, covenant or condition of this lease, nor of the LESSOR'S right of re-entry for breach of covenant, nor of the LESSOR'S right to declare and enforce a forfeiture for any such breach, and the failure of the LESSOR to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such right for any subsequent breach of any term, covenant or condition.

49. Extension of Time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LESSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply with, observe or perform any of the terms, conditions and covenants contained herein.

50. Justification of Sureties. That such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the LESSOR security in certified checks, certificates of deposit (payable on demand or after such period as the LESSOR may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to said LESSOR a deed or deeds of trust of real property, all of such character as shall be satisfactory to said LESSOR and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time

thereafter held by the LESSOR under the foregoing proviso shall be determined by the LESSOR, and that the LESSEE may, with the approval of the LESSOR, exchange other securities or money for any of the deposited securities if in the judgment of the LESSOR the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the LESSEE, but only upon the written consent of the LESSOR and that until such consent be granted, which shall be discretionary with the LESSOR, no surety shall be released or relieved from any obligation hereunder.

51. Waiver, Modification, Reimposition of Bond Provision. Upon substantial compliance by the LESSEE of the terms, covenants, and conditions herein contained on its part to be observed and performed, the LESSOR at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the LESSOR reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

52. Force Majeure. THE LESSOR AND THE LESSEE COVENANT AND AGREE WITH EACH OTHER that neither party shall be deemed to be in default for the nonobservance or nonperformance of any covenant, obligation or undertaking required under this lease in the event that and as long as such observance or performance is prevented, delayed, or hindered by an act of God or public enemy, fire, earthquake, hurricane, floods, explosion, action of the elements, war or national defense preemptions. In the event of any delay arising by reason of any of the foregoing events, the time for performance of such covenant, obligation, or undertaking as provided for in this lease shall be extended for a period equal to the number of days of such delay, and the respective parties shall commence such observance or performance of the covenant, obligation or undertaking so delayed immediately after removal of the delaying cause. **THE LESSOR FURTHER AGREES** that notwithstanding as long as the easement area or any portion thereof shall be unusable for the LESSEE'S purpose as herein provided by reason of damage or destruction by an act of God or public enemy, earthquake, hurricane, action of the elements, or war or national defense preemptions, the rent payable hereunder by the LESSEE to the LESSOR during the period the LESSEE is unable to use the easement area or any portion thereof shall be reduced in the proportion that the easement area so rendered unusable shall bear to the area hereby; provided that, in case such damage or destruction shall be mutual agreement of the parties hereto be held to render more than half of the easement area unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this lease and be relieved of any further obligations hereunder.

IN WITNESS WHEREOF, the STATE OF HAWAII, the LESSOR, and LESSEE herein have caused these presents to be executed this 15th day of March, 1991, both effective on day and year hereinabove set forth.

STATE OF HAWAII

By [Signature]
Its

By _____
Its

MATSON TERMINALS, INC.

By James A. Marnane
Its Vice President,
Facilities and Maintenance
By Daniel G. Johnson
Its Secretary

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

APPROVED:

BOARD OF LAND AND NATURAL RESOURCES

By [Signature]
Chairman and Member

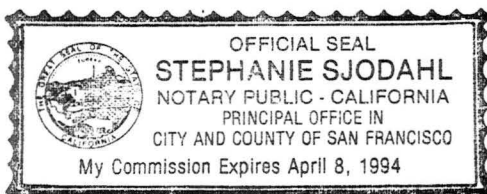
By _____
Member

Approved by the Board
at its meeting held on
8-10-90, J-8 [Signature]

STATE OF CALIFORNIA) ss.
CITY AND COUNTY OF SAN FRANCISCO)

On this 14 th day of Feb., 1991, before me, Stephanie Sjodahl, the undersigned Notary Public, personally appeared T. A. Marnane, personally known to me to be the person who executed the within instrument as Vice President, Facilities and Maintenance on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.



Stephanie Sjodahl
Notary Public

Covenant 29, Assignments, etc.

The Department of Transportation (DOT) has the right to receive from the lessee (assignor) a premium based on the amount by which the consideration paid for the assignment, whether by cash, credit or otherwise exceeds the adjusted depreciated cost of improvements, trade fixtures and personal property being transferred to the assignee. The appropriate cost index will be applied to determine the adjusted depreciated cost. The value of the inventory of merchandise shall also be deducted from the consideration paid. Intangibles such as goodwill, business name recognition, etc., are not deductible.

To encourage long-term occupancy and discourage speculation, the premium for an assignment of a lease issued or awarded under Chapter 102 or 171, HRS, shall be 50%.

DOT may impose a surcharge equal to 10% of the annual rental if the assignor has not performed lease covenants to improve or use the property for its specific uses.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or

EXHIBIT "B"

renovations bear to the whole term. The whole term will be from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture. (See Attachments 1, 2 and 3 for examples.)

All lessees shall be required to furnish the division with the actual costs of construction of all improvements and renovations within 30 days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish the division with an inventory of all personal property placed on the premises. Divisions shall maintain records of all costs incurred by the lessee for construction of improvements and renovations as well as trade fixtures submitted by the lessee and shall include the Construction Cost Index (CCI) and Consumer Price Index (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

Only in cases where the lessee has essentially constructed or directed the construction of its own improvements, may the lessee be given the option of paying for an appraiser, but to be selected by DOT, to determine the valuation of the improvements.

The evaluation for premium determination will only be applicable to leases from which DOT can receive a premium as determined by the Attorney General.

SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apts., Hotels, Office Bldgs. (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

	Actual cost	:	\$500,000
	CCI (most recent):	:	121.1
	CCI (base year):	:	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	:	57 mos.
	Whole term:	:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$

SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Example

1. Adjusted Cost of Trade Fixture

<u>Refrigerator</u>	
Actual cost	: \$1510
CPI (most recent):	118.1
CPI (base year)	: 104.6
Expired term	: 57 mos.
Whole term	: 96 mos.
(Anticipated life)	

$$\text{Actual Cost} \times \frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$$

$$\$1510 \times \frac{118.1}{104.6} = \$1705$$

2. Depreciation

$$\$1705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1705 - \$1012 = \$693$$

SCHEDULE C. Assignment of Lease Calculations

1. Subtract the amount, if any, of the consideration for the assignment that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and no. 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage. Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		<u>- 693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	<u>\$ 45,055</u>